

IN THE COURT OF APPEALS
STATE OF ARIZONA
DIVISION TWO

FILED BY CLERK

SEP 25 2007

COURT OF APPEALS
DIVISION TWO

THE STATE OF ARIZONA,)	
)	
Respondent,)	2 CA-CR 2007-0196-PR
)	DEPARTMENT A
v.)	
)	<u>MEMORANDUM DECISION</u>
)	Not for Publication
ANGEL RAYMOND MEZA,)	Rule 111, Rules of
)	the Supreme Court
Petitioner.)	
)	

PETITION FOR REVIEW FROM THE SUPERIOR COURT OF PINAL COUNTY

Cause No. CR200501762

Honorable Joseph R. Georgini, Judge

REVIEW GRANTED; RELIEF DENIED

Harriette P. Levitt

Tucson
Attorney for Petitioner

H O W A R D, Presiding Judge.

¶1 Petitioner Angel Raymond Meza was charged with two counts of aggravated assault and one count of first-degree trespass. Pursuant to a plea agreement, he was convicted of one count of aggravated assault, as amended. The trial court sentenced Meza to an aggravated, seven-year term of imprisonment, the term recommended by the probation department. Meza filed a petition for post-conviction relief pursuant to Rule 32, Ariz. R.

Crim. P., in which he claimed the trial court had abused its discretion in imposing the seven-year prison term. The trial court denied relief, and this petition for review followed. Unless the trial court abused its discretion in denying Meza's request for post-conviction relief, we will not disturb that ruling. *See State v. Krum*, 183 Ariz. 288, 293, 903 P.2d 596, 601 (1995).

¶2 At the change-of-plea hearing, Meza admitted he had had an altercation with the victim and had hit her with a hammer. In his petition for post-conviction relief, he admitted that he “went into a rage and accused the victim[, his former girlfriend] of seeing other men.” He further admitted he had punched her in the face, hit her in the head with a hammer, and then followed her to the bathroom and stabbed her in the thigh with a knife. The circumstances of the assault are also set forth in the presentence report.

¶3 On the date initially set for sentencing, defense counsel asked the court to order that Meza submit to a psychiatric evaluation pursuant to Rule 26.5, Ariz. R. Crim. P. The court granted the request and continued Meza's sentencing.

¶4 At the sentencing hearing, the trial court found the following constituted aggravating circumstances: the victim was seriously injured during the course of what were two separate assaults; the victim suffered physical, emotional, and financial harm; Meza had been convicted of three felonies within the preceding three years; and Meza has lengthy juvenile and adult criminal records and has failed to benefit from the courts' lenient treatment of him in the past. In his petition for post-conviction relief, Meza maintained,

inter alia, that the trial court had not given sufficient weight in mitigation to the results of the psychiatric evaluation. Meza was diagnosed as having a major depressive disorder with psychotic features, possible schizophrenia, and intermittent explosive disorder resulting, in part, from brain damage. He asserted the evaluation results established “a causal nexus between Petitioner’s intermittent rage disorder and his conduct in the case at bar. Therefore, the court was duty bound to consider this strong mitigating factor in sentencing.” Meza reasserts this claim on review, contending he is “entitled to an evidentiary hearing and to be resentenced after due consideration of his mental illness.”

¶5 This court will not disturb a sentence that is within the statutory range absent an abuse of discretion. *State v. Russell*, 175 Ariz. 529, 534, 858 P.2d 674, 679 (App. 1993). A trial court abuses its discretion if it “fails to conduct an adequate investigation into the facts relevant to sentencing.” *Id.* The court is not required to find mitigating circumstances exist simply because evidence in mitigation has been presented; it is only required to consider that evidence. *State v. Fatty*, 150 Ariz. 587, 592, 724 P.2d 1256, 1261 (App. 1986). And we will presume the court considered any mitigation evidence placed before it. *See State v. Everhart*, 169 Ariz. 404, 407, 819 P.2d 990, 993 (App. 1991). “The consideration of mitigating circumstances is solely within the discretion of the court.” *State v. Webb*, 164 Ariz. 348, 355, 793 P.2d 105, 112 (App. 1990).

¶6 The court was well aware of Meza’s mental health issues. The court had before it Dr. Marc Walters’s evaluation of Meza, as do we, and defense counsel urged the

court to take Meza’s mental illness into account, pointing out the various disorders and how each affects Meza’s conduct. Counsel suggested there was a causal relationship between Meza’s disorders and his conduct, explaining, in particular, that Meza’s explosive disorder “caused or causes this behavior.” The court was thus aware of and considered the factors relevant to sentencing, including Meza’s extensive mental health issues, but was not obliged to find that mitigating circumstances existed. *See Fatty*. Given the record before us, we have no basis for finding the trial court abused its discretion either when it sentenced Meza or when it denied post-conviction relief without an evidentiary hearing. Therefore, we have no basis for disturbing the court’s order denying post-conviction relief.

¶7 The petition for review is granted, but relief is denied.

JOSEPH W. HOWARD, Presiding Judge

CONCURRING:

J. WILLIAM BRAMMER, JR., Judge

PHILIP G. ESPINOSA, Judge